Vandergriff et al v. Clermont County Public Library Board of Trustees Doc. 8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GEORGE AND CATHY VANDERGRIFF AND INSTITUTE FOR PRINCIPLED POLICY,	:	Case No. 1:08-cv-381
	:	(Judge Barrett)
Plaintiffs,	:	ANSWER OF DEFENDANT
v.	:	
CLERMONT COUNTY PUBLIC LIBRARY BOARD OF TRUSTEES,	:	
	:	
Defendants.	:	

Now comes Mary Lynne Birck, assistant prosecuting attorney and counsel for Defendant Clermont County Library Board of Trustees [hereinafter "Library Board"] and responds on its behalf to Plaintiffs' Verified Complaint for Declaratory Judgment, Preliminary and Permanent Injunctions, and Damages, as follows:

1. Defendant acknowledges the legal allegations contained within paragraphs 1 through 4 of Plaintiffs' Complaint.

2. Defendant denies for lack of knowledge the allegations contained within paragraphs 5 and 6 of Plaintiffs' Complaint.

3. Defendant admits the allegations contained within paragraph 7 of Plaintiffs' Complaint.

4. Defendant denies for lack of knowledge the allegations contained within paragraphs 8 and 9 of Plaintiffs' Complaint.

5. Defendant's Meeting Room Use Policy was amended on June 9, 2008, prior to

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the service of Plaintiffs' Complaint. Defendant admits the facts as alleged in paragraphs 10, 11, and 12 of Plaintiffs' Complaint as they pertain to the former meeting room use policy.

6. With regard to the facts alleged in paragraph 12 of the Complaint, Defendant acknowledges that, pursuant to its former meeting room policy, the Director would properly review requests submitted for use of the meeting room. Defendant further states that in the event that a requestor was denied use of the meeting room, the requestor could appeal such denial to Defendant Library Board. Defendant states that none of the Plaintiffs choose to appeal the denial to the Board nor requested a change in the meeting room use policy.

7. With regard to the facts alleged in paragraphs 13 and 14, Defendant admits the facts as alleged with regard to its former policy regarding meeting room use.

8. Defendant denies for lack of knowledge the facts alleged in paragraph 15 of the Plaintiff's Complaint.

9. Defendant admits that Mrs. Vandergriff requested and was denied use of the meeting room. Defendant denies for lack of knowledge the other facts alleged in paragraph 16 of the Plaintiff's Complaint.

10. Defendant admits that Mr. Vandergriff requested and was denied use of the meeting room. Defendant denies for lack of knowledge the facts alleged in paragraph 17 of the Plaintiff's Complaint.

11. Defendant denies for lack of knowledge the facts alleged in paragraph 18.

12. Defendant admits that Mr. Vandergriff was denied use of the meeting room.

Defendant denies for lack of knowledge the facts alleged in paragraph 19.

13. With regard to paragraph 20, Defendant admits that Exhibit B is a true and accurate copy of the rejection notice.

14. Defendant denies for lack of knowledge the facts alleged in paragraph 21.

15. Defendant denies for lack of knowledge the facts alleged in paragraph 22. Defendant notes that pursuant to its current policy, the meeting rooms are to be used for Library-sponsored programs and are not available to individuals or other organizations for meeting use.

16. Defendant denies the allegations contained in paragraphs 23, 24, 25, and 26.

17. With regard to paragraph 27, Defendant reincorporates its responses to the allegations set forth in paragraphs 1 through 26.

18. With regard to the allegations set forth in paragraph 28, Defendant agrees that, under its previous policy, rooms were available for use by the general public for meetings. Defendant has changed its meeting room policy to prohibit meetings which are not library-sponsored.

19. Defendant denies for lack of knowledge the allegations contained within paragraph 29 of Plaintiffs' Complaint.

20. Defendant denies the allegations contained within paragraphs 30, 31, and 32 of Plaintiffs' Complaint.

21. With regard to paragraph 33, Defendant reincorporates its responses to the allegations set forth in all preceding paragraphs.

22. Defendant denies for lack of knowledge the allegations contained within

paragraph 34 of Plaintiffs' Complaint.

23. Defendant denies the allegations contained within paragraphs 35, 36, 37, and 38.

24. With regard to paragraph 39, Defendant reincorporates its responses to the allegations set forth in all preceding paragraphs.

25. Defendant acknowledges the legal conclusion contained within paragraph 40.

26. Defendant denies the allegations contained within paragraphs 41, 42, and 43 of Plaintiffs' Complaint.

27. With regard to paragraph 44, Defendant reincorporates its responses to the allegations set forth in all preceding paragraphs.

28. Defendant denies the allegations contained within paragraphs 45, 46, 47, and 48.

29. With regard to paragraph 49, Defendant reincorporates its responses to the allegations set forth in all preceding paragraphs.

30. Paragraph 50 contains a legal conclusion.

31. Defendant denies for lack of knowledge the allegations contained within paragraph 51.

32. With regard to the allegations contained within paragraphs 52 and 53, Defendant denies that its current policy imposes any burden on religious beliefs, speech or conduct of any person.

33. Defendant denies the legal conclusions set forth in paragraph 54 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs do not have standing to bring this action nor is the action ripe for judgment.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' allegations fail to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are moot. Defendant Library Board changed the policy of which Plaintiffs complain. Defendant Library Board has also offered to find a suitable place for Plaintiffs to conduct its proposed meetings.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs have not exhausted the administrative remedies and appeal process available to them.

FIFTH AFFIRMATIVE DEFENSE

Any damages and/or injuries allegedly suffered by Plaintiffs are the direct and proximate result of Plaintiffs' failure to bring an appeal of the interim-Director's decision to Defendant Library Board or otherwise notify Defendant Library Board of the interim-Director's denial of their request for a meeting room.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate any damages and/or injuries they have allegedly suffered.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by collateral estoppel, res judicata and/or the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

______Defendant Library Board acted at all times in good faith, without malice either actual or implied, and in accordance with all applicable statutes and regulations, and its actions in all respects were reasonable, proper, justified, lawful and without wrongful intent, impact, design, or consequence, and Defendant Library Board is entitled to all available immunities, federal and state, to bar Plaintiffs' claims against it.

Defendant reserves the right, in accordance with the Rules of Civil Procedure, to amend this answer to conform with evidence adduced in discovery or at trial for the purpose of asserting any additional defenses or claims.

WHEREFORE, having fully answered, Defendant Library Board prays that the Verified Complaint for Declaratory Judgment, Preliminary and Permanent Injunctions, and Damages be dismissed with prejudice to future action and that Plaintiffs receive no costs nor fees.

Respectfully submitted,

/s/ Mary Lynne Birck

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Certificate of Service

I hereby certify that the foregoing Answer was filed electronically this 25th day of June, 2008. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Mary Lynne Birck

Mary Lynne Birck OH 0063496
Assistant Prosecuting Attorney